

## **COMMITTEE FOR PUBLIC COUNSEL SERVICES**

### **STANDARDS FOR REPRESENTATION OF CLIENTS BY MENTAL HEALTH APPELLATE COUNSEL**

These standards are intended for use by the Committee for Public Counsel Services in evaluating, supervising and training counsel assigned pursuant to G.L. c. 211D. Counsel assigned pursuant to G.L. c. 211D must comply with these standards and the Massachusetts Rules of Professional Conduct. In evaluating the performance or conduct of counsel, the Committee for Public Counsel Services will apply these standards and the Massachusetts Rules of Professional Conduct, as well as all CPCS policies and procedures included in this manual and other CPCS publications.

1. Immediately upon receipt of the assignment of a case, appellate counsel (“counsel”) shall: (a) file an appearance in the appropriate court; (b) communicate with the client to inform the client of the assignment; and (c) determine whether a stay of a judgment or order of the lower court should be sought pending appeal. In the event a stay should be sought, counsel shall immediately seek one in accordance with Mass. R. App. Proc., Rule 6. If appellate counsel would like the assistance of a mentor, he or she should request a mentor assignment from CPCS’s Mental Health Litigation Unit.
2. Within five days of receipt of the assignment, counsel shall determine whether the provisions of Mass. R. App. Proc., Rules 8 and 9(b) and 9(c) have been complied with, and if they have not, shall immediately take the steps required to comply, including filing any necessary motions for the extension of time.
3. Within three weeks after the assignment, or, in the event that the transcript has not been completed at the time of the assignment, within three weeks after the receipt of the transcript, counsel shall read the entire transcript and review the entire record of the case. Counsel should at this time determine whether the record is accurate and complete and take such steps as may be necessary under Rule 8(c)-(e) to correct any errors. Counsel shall also confer with any mentor assigned and with CPCS’s Director of Mental Health Litigation about issues of law that may be raised on the client’s appeal.
4. Counsel shall keep the client and the Director of Mental Health Litigation informed of all significant developments in the client’s case. Counsel shall respond in a timely manner to all correspondence from the client, provided that such correspondence is of a reasonable volume and at a reasonable interval. Counsel shall inform the client and the Director of Mental Health Litigation of the date, time and place scheduled for oral argument of the appeal as soon as he or she receives notice thereof from the appellate court.
5. Upon receiving notice of the assembly of the record, counsel shall take the steps necessary to ensure the timely entry of the appeal in accordance with Mass. R. Civ. Proc., Rule 10(a)(1) and (3) and shall, where necessary, file appropriate motions for leave to proceed *in forma pauperis*, pursuant to Mass. R. App. Proc., Rule 12, or for payment or waiver of fees and costs, as necessary under G.L. c. 261, §§ 27A through 27G.
6. After reading the transcript, counsel shall confer with the client and with the trial counsel, if appropriate, about the issues which may be raised on the client’s appeal. Counsel should pay particular attention to whether a claim as to ineffective assistance of trial counsel may form the basis of an appeal. See, *Care and Protection of Stephen*, 401 Mass. 144 (1987).
7. If at any time the client insists on having briefed on his or her appeal a contention which, in counsel’s judgment, cannot be supported by any rational argument, counsel shall (a) immediately inform and

consult with the Director of Mental Health Litigation and if the Director concurs, (b) inform the client of the client's right with respect to such contention pursuant to *Commonwealth v. Moffett*, 383 Mass. 201, 203-209 (1981); (c) supply the client with a copy of the *Moffett* opinion; and (d) if the client thereafter wishes to invoke his or her *Moffett* rights with respect to such contention, comply in all respects with the guidelines set forth in *Moffett*, at 208-209 and n. 3. *Care and Protection of Valerie*, 403 Mass. 317 (1988).

8. Counsel shall timely file in the appropriate court all motions necessary or advisable to preserve and perfect the client's appellate rights, including, where necessary, motions pursuant to Mass. R. App. Proc., Rule 14(b) to enlarge the time for filing the brief on behalf of the client, and motions pursuant to Mass. R. App. Proc., Rule 8 to correct or expand the record.

9. The brief filed by counsel shall be of high quality and conform in all respects with Mass. R. App. Proc., Rules 16, 18 and 20.

10. Counsel shall transmit to the client and the Director of Mental Health Litigation a copy of the brief filed on the client's behalf, and shall also transmit to the client a copy of the brief for the Commonwealth and copies of all other substantive documents pertaining to the appellate proceedings.

11. Oral argument of the appeal should not, absent unusual circumstances and with the approval of the client and the Director of Mental Health Litigation, be waived with respect to any case.

12. Counsel shall inform the client by letter of the decision of the appellate court on the date counsel receives notice thereof, and shall transmit to the client and to the Director of Mental Health Litigation a copy of the decision without delay.

13. If a decision of the Massachusetts Appeals Court is adverse to the client, counsel shall promptly inform the client of the client's right, pursuant to Mass. R. App. Proc., Rule 27.1, to make application to the Supreme Judicial Court for further appellate review of the case; and, if the client requests that such application be made, counsel shall prepare and file such application within the time prescribed by said Rule 27.1.

14. In the event that the client's appeal is unsuccessful, counsel shall have the discretion, upon the request of the client and subject to the approval of the Director of Mental Health Litigation, to seek relief when in counsel's best judgment there exists a reasonable likelihood that such relief may be obtained, by appeal or petition in the federal courts.